HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION No. 24088 OF 2005

Dated 30-11-2005

Between :

1. The Nagarjuna All Castes Sand and Ferry Boat Workers Labour Contract Cooperative Society Ltd., No.1-3071/2005, Undavalli, Thadepalli Mandal, Guntur District, represented by its President Mr. Lingamsetti Mangaiah.

...petitioner.

And :

1. The District Level Committee for Sand Auctions, Zilla Parishad Compound, Gulntur and another.

…Respondents.

ORDER :

This writ petition has been filed by the Nagarjuna All Castes Sand and Ferry Boat

Workers Labour Contract Co-Operative Society Ltd., represented by its President Mr. Lingamsetty Mangaiah with a prayer to issue writ, order or direction, more particularly one in the nature of writ of Mandamus, declaring the action of the respondents in not granting temporary permits in respect of Reach No.10, Undavalli Village, Thadepalli Mandal, Guntur District, as arbitrary, illegal and violative of the A.P. Minor Mineral Concession Rules, 1966.

2. The petitioner-society is registered under Section 8 of the A.P. Co-operative Societies Act, 1964. The members of the Society are boatsmen. The society approached the respondents on 05-09-2005 requesting to issue temporary permits. The 2nd respondent issued auction notification dated 12-9-2005 proposing to conduct auction for grant of temporary permits. In response to the auction notification for grant of temporary permits, the petitioner Society submitted tender on 14-9-2005 quoting the bid amount as Rs.22,600/-. Apart from the petitioner, another person namely R.Balakrishna submitted tender quoting the bid amount as Rs.38,363/-. When the respondents have not granted temporary permits to the petitioner-society by giving preference as provided under Rule 9 of A.P. Minor Mineral Concession Rules, 1966, the petitioner-society has chosen to approach this Court by invoking jurisdiction of this Court under Article 226 of the Constitution of India with the relief stated supra.

3. The 2nd respondent filed counter-affidavit. It is stated in the counter-affidavit that Rule 9-B provides preference in case of granting lease by the sealed tender cum public auction, but such preference is not provided to the Societies similarly situated as that of the petitioner-society for grant of temporary leases. I deem it appropriate to refer paragraphs 3 to 5 of the counter-affidavit and it is thus :

> " 3. In reply to the para No.2, it is submitted that a notification was issued calling tenders for grant of temporary permit to the Reach No.10, Undavalli village limits vide this Office Notification No.1960/2005 G2 dated 12.9.2005. In response to the notification Sri R.Bala Krishna, Guntur and The Nagarjuna All Castes Sand and Ferry Boat Workers Labour Contract Co-op. Society Ltd., Undavalli participated in the auction for grant of Temporary permits dt. 14.09.2005. Sri R. Bala Krishna stood as highest tenderer for Rs.38,363/-. After opening of the tender the petitioner society claimed that they are entitled on preferential basis as they are the local society and entitled to claim as per Rule 9 B (3) of G.O.Ms.No.1, Indus & Comr.(MI) Dept. dated 1.1.2001. It is submitted that the Rule 9-B (3) of G.O. Ms.No.1, Inds & Comr. (MI) Dept., dated 1.1.2001 is clear about the procedure for temporary permits and the said rule does not speak any concession to any society in case of temporary permits."

> "4. In reply to the para Nos. 3 & 4 of the affidavit, it is submitted that the previous leasehold rights of Reach No.10, Undavalli village limits expired on 19.5.2005. Regular auction notification was issued vide this office Notification No. 675/2005 G2 dt.31.3.2005 calling tenders to Reach No.10, Undavalli village limits on 19.4.2005. Auction was conducted and confirmation was given in favour of Sri Anjaneya All Castes Boatmen Labour Contract Co-op. Society Ltd., Nagayalanka as per the instructions issued in Govt. Memo No.9550/Pts. III /A3/2005-1 dated 7.7.2005. Aggrieved by this the Krishnaveni All Castes Sand and Ferry Boatmen Mutually aided co-op. Society Ltd., Undvalli approached the Hon'ble High Court in W.P. No.18155/2005 and the Hon'ble High Court issued interim stay orders."

> "5. In reply to para 5 of the affidavit, it is submitted that the Nagarjuna All Castes Sand and Ferry Boat workers labour Contract Co-op Society Ltd., Undavalli is one of the tenderer participated in tenders. Sri R.Bala Krishna stood as highest tenderer for Rs.38,363/-. The society claimed for lease hold rights in favour of the society as per Rule No. 9B (3) of G.O.Ms.No.1, Inds & Comr. (mI) Dept dated 1.1.2001. But, as stated supra there is no preferential rights of the societies in temporary permits."

4. Heard learned Counsel for the petitioner and learned Government Pleader for Panchayat Raj and Rural Development appearing for the respondents.

5. The learned counsel for the petitioner submits that when preference is given to the petitioner-society in respect of the regular lease as provided under Rule 9-B, the same preference is to be extended in case of temporary leases also and thus, the action of the respondents in not allowing preference to petitioner-society in respect of temporary lease is arbitrary and contrary to the provisions of Rule 9-B of A.P. Minor Mineral Concession Rules, 1966.

6. The learned Government Pleader for Panchayat Raj and Rural Development appearing for the respondents submits that preference by allowing 10% concession on the highest bid amount to the societies similarly situated as that of petitioner-society is permissible only in case of granting leases and not in respect of the temporary leases.

7. A fact is required to be noted that the Reach No.10, Undavalli village limits was put to auction on 14-9-2005 and the same was questioned in Writ Petition No.18155 of 2005 and therefore, the respondents resorted to granting temporary leases as provided under Rule 9-B (3) under A.P. Minor Mineral Concession Rules, 1966 . 9-B (3) deals with Notification of the Sand Bearing areas for Granting leases by Sealed Tender cum Public Auction whereunder preference is to be given to registered

boatsmen by allowing 10% concession on the highest bid/tendered amount offered in the Auction Hall. Further concession is with regard to payment of bid amount in four equal quarterly instalments. Sub-rule 3 of Rule 9-B reads as follows :

> "3. The Reaches identified in Major Rivers where the sand is lifted and carried by means of boats, the Registered boatsmen Co-op. Society registered under the Andhra Pradesh Co-op. Societies Act, 1964 shall be given preference by allowing 10% concession on the highest bid/Tendered amount offered in the Auction Hall. The Confessional knocked amount be paid by the successful registered boatsmen's Co.op. Society in not more than four equal quarterly installments well before commencement of each quarter. If there is more than one Boatsmen Co-op. Society participating in the Auction and claims for the same reach, local registered Boatsmen Co-op. Society shall be given preference. However, if there is more than One local Registered Boatsmen Society participating in the auction and claims for the same reach the successful bidder/tenderer shall be decided by drawing lots. If non-local Societies participates and claims for the same reach the successful bidder/tenderer shall be declared by drawing lots among the other non-local registered Co-op. Societies."

Rule 9-L deals with granting of temporary leases and it reads as follows :

> "In case of the areas which are not leased out by sealed tender cum public auction and new area, the District Level Committee shall make alternative arrangements for quarrying sand in order to protect monetary loss to the Governments the District Level Committee for issue of Temporary permits shall make such arrangements by the concerned District Panchayat Officers for a period not exceeding 15 days. All the participants shall put their respective bids in a secured box with proper date and time and venue. At the end of the prescribed time the box shall be opened by the Committee and the highest bidder will be given the confirmation orders for temporary permits:
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> Provided that in case the lease expires the District Panchayat Officer may permit the earlier lessee to continue the quarrying operation on payment of proportionate amount with 10% enhancement which should not exceed 60 days. If the earlier lessee does not come forward to continue the quarrying operations, the District Panchayat Officers may regulate the quarrying by following the above procedure.
>
> Provided further that the Government may for valid reasons continue the same for more than 60 days."

8. On a plain reading of 9-B and 9-L, the temporary lease is only for 15 days which may extent up to 60 days and the Government may for valid reasons continue the same for more than 60 days. With regard to granting 10% concession of the highest bid amount to the Societies similarly situated as that of the petitioners, it is only in respect of leases granted under Rule 9-B and not in respect of temporary leases granted under Rule 9-B. Under Rule 9-B (3), the Society is permitted to pay

the amounts in not more than four equal quarterly instalments. That itself indicates that in case lease for one year or more, preference is to be given to the Society. Such preference is silent in Rule 9-L which deals with grant of temporary leases. Therefore, I find that this writ petition is devoid of merits and the same is liable to be dismissed.

9. Accordingly, the writ petition is dismissed. No costs.

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Justice B. SESHASAYANA REDDY

Date : 30th November, 2005.

Dvs

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